

REMARKS

Applicant has carefully reviewed this Application in light of the Office Action mailed March 4, 2003. Applicant believes all pending claims, as originally submitted, are allowable over the references cited by the Examiner. Applicant respectfully requests reconsideration and favorable action in this case.

Claim Rejections—35 U.S.C. § 102(a)

The Examiner rejected Claims 10 and 28 under 35 U.S.C. § 102(a) as being clearly anticipated by U.S. Patent 5,546,379 issued to Thaweethai et al ("*Thaweethai*").

Independent Claim 10. Independent Claim 10 recites:

A method of selecting a modem for service, comprising:
storing a performance attribute for each of a plurality of modems;
receiving a modem request;
selecting a modem for service according to the modem's performance attribute; and
coupling a remote modem and the selected modem.

Thaweethai does not disclose, teach, or suggest either "storing a performance attribute for each of a plurality of modems" or "selecting a modem for service according to the modem's performance attribute," as recited in Claim 10.

Thaweethai discloses a "Bandwidth-on-demand Multiplexing System" (or "BMS") which stores modem capabilities information in a database. (Col. 16, ll. 3-4). The Modem Pooling Control Function ("MPCF") maintains the modem capabilities information. (Col. 16, ll. 6-8). "The MPCF maintains a cross reference between the modem characteristics and the modem type." (Col. 18, ll. 52-53). When dialing out, the user specifies a modem characteristic, which is input to the BMS, and the MPCF selects a modem type that satisfies the characteristics requirement. (Col. 18, ll. 44-56). The summary of the invention describes this functionality:

When a modem is needed for dialing out, a [sic] modem characteristics must be specified. The modem characteristics

describe the required modem's configuration. A cross reference between each modem characteristics and modem types are maintained. For each set of modem characteristics, there is a set of modem types that satisfies such configuration. Not all modem types will satisfy all modem characteristics. MPCF will select one of the modem types in that subset for dialing out.

(Col. 2, ll. 43-51).

The system described in *Thaweethai* does not "stor[e] a performance attribute for each of a plurality of modems," as recited in Claim 10. First, the system in *Thaweethai* stores modem capabilities information as opposed to a performance attribute. Second, the system in *Thaweethai* associates the capabilities information with different modem types as opposed to individual modems.

In addition, the system in *Thaweethai* does not "select[] a modem for service according to the modem's performance attribute," as recited in Claim 10. Instead, the system in *Thaweethai* selects modem types as opposed to individual modems. Furthermore, the selection is based on the modem capabilities of the modem types as opposed to a performance attribute of an individual modem.

For at least these reasons, independent Claim 10 is patentable over *Thaweethai*. Accordingly, Applicant respectfully requests reconsideration and the allowance of Claim 10, together with those claims that depend from Claim 10.

Independent Claim 28. Independent Claim 28 recites:

Modem selection software embodied in a computer-readable medium and operable to perform the following steps:
storing a performance attribute for each of a plurality of modems;
receiving a modem request;
selecting a modem for service according to the modem's performance attribute; and
coupling a remote modem and the selected modem.

Thaweethai does not disclose, teach, or suggest modem selection software operable to “stor[e] a performance attribute for each of a plurality of modems” or to “select[] a modem for service according to the modem’s performance attribute,” as recited in Claim 28. As explained above with reference to Claim 10, the system in *Thaweethai* (1) stores modem capabilities information as opposed to a performance attribute; (2) associates the modem capabilities information with modem types as opposed to individual modems; (3) selects modem types as opposed to individual modems; and (4) makes the selection based on the modem capabilities of the modem types as opposed to a performance attribute of an individual modem. For at least these reasons, independent Claim 28 is patentable over *Thaweethai*. Accordingly, Applicant respectfully requests reconsideration and the allowance of Claim 28, together with those claims that depend from Claim 28.

Claim Rejections—35 U.S.C. § 103(a)

The Examiner rejected Claims 1, 3-9, 12-19, 21-27, and 30-36 under 35 U.S.C. § 103(a) as being unpatentable over *Thaweethai*.

Independent Claim 1 and Dependent Claims 3-9. Independent Claim 1 recites:

An access server, comprising:
a plurality of modems;
a memory operable to store a performance attribute for each modem;
an allocation module coupled to the memory and operable to receive a modem request and to select a modem for service according to the modem’s performance attribute; and
a telecommunications interface coupled to the allocation module and operable to couple a remote modem to the selected modem.

Thaweethai does not disclose, teach, or suggest “a memory operable to store a performance attribute for each modem,” as recited in Claim 1. As explained above with reference to Claim 10, the system in *Thaweethai* (1) stores modem capabilities information as

opposed to a performance attribute and (2) associates the modem capabilities information with modem types as opposed to individual modems.

Thaweethai also does not disclose, teach, or suggest “an allocation module coupled to the memory and operable to . . . select a modem for service according to the modem’s performance attribute,” as recited in Claim 1. As explained above with reference to Claim 10, the system in *Thaweethai* (1) selects modem types as opposed to individual modems and (2) makes the selection based on the modem capabilities of the modem types as opposed to a performance attribute of an individual modem.

For at least these reasons, independent Claim 1 is patentable over *Thaweethai*. Accordingly, Applicant respectfully requests reconsideration and the allowance of Claim 1, together with those claims that depend from Claim 1.

Claims 3-9, which depend from independent Claim 1, are patentable because, at a minimum, they include the limitations of base Claim 1. Applicant respectfully disagrees with the Examiner’s characterization of some dependent claims as a matter of design choice. Dependent Claims 3-9 include further limitations that are not disclosed, taught, or suggested by *Thaweethai*. Accordingly, Applicant respectfully requests reconsideration and the allowance of dependent Claims 3-9.

Dependent Claims 12-18. Claims 12-18, which depend from independent Claim 10, are patentable because, at a minimum, they include the limitations of base Claim 10. As explained above, Claim 10 is patentable over *Thaweethai* because *Thaweethai* does not disclose, teach, or suggest either “storing a performance attribute for each of a plurality of modems” or “selecting a modem for service according to the modem’s performance attribute,” as recited in Claim 10.

Furthermore, Applicant respectfully disagrees with the Examiner's characterization of some dependent claims as a matter of design choice. Dependent Claims 12-18 include further limitations that are not disclosed, taught, or suggested by *Thaweethai*.

For at least these reasons, dependent Claims 12-18 are patentable over *Thaweethai*. Accordingly, Applicant respectfully requests reconsideration and the allowance of Claims 12-18.

Independent Claim 19 and Dependent Claims 21-27. Independent Claim 19 recites:

An apparatus for selecting a modem for service, comprising:
a memory operable to store a performance attribute for a plurality of modems; and
an allocation module coupled to the memory and operable to receive a modem request, to select a modem for service according to a performance attribute stored in the memory, and to communicate a modem identifier associated with the selected modem.

Thaweethai does not disclose, teach, or suggest “a memory operable to store a performance attribute for a plurality of modems,” as recited in Claim 19. As explained above with reference to Claim 10, the system in *Thaweethai* (1) stores modem capabilities information as opposed to a performance attribute and (2) associates the modem capabilities information with modem types as opposed to individual modems.

Thaweethai also does not disclose, teach, or suggest “an allocation module coupled to the memory and operable . . . to select a modem for service according to a performance attribute stored in the memory,” as recited in Claim 19. As explained above with reference to Claim 10, the system in *Thaweethai* (1) selects modem types as opposed to individual modems and (2) makes the selection based on the modem capabilities of the modem types as opposed to a performance attribute of an individual modem.

For at least these reasons, independent Claim 19 is patentable over *Thaweethai*. Accordingly, Applicant respectfully requests reconsideration and the allowance of Claim 19, together with those claims that depend from Claim 19.

Claims 21-27, which depend from independent Claim 19, are also patentable because, at a minimum, they include the limitations of base Claim 19. Applicant respectfully disagrees with the Examiner's characterization of some dependent claims as a matter of design choice. Dependent Claims 21-27 include further limitations that are not disclosed, taught, or suggested by *Thaweethai*. Accordingly, Applicant respectfully requests reconsideration and the allowance of Claims 21-27.

Dependent Claims 30-36. Claims 30-36, which depend from independent Claim 28, are patentable because, at a minimum, they include the limitations of base Claim 28. As explained above, Claim 28 is patentable over *Thaweethai* because *Thaweethai* does not disclose, teach, or suggest modem selection software operable to "stor[e] a performance attribute for each of a plurality of modems" or to "select[] a modem for service according to the modem's performance attribute," as recited in Claim 28.

Furthermore, Applicant respectfully disagrees with the Examiner's characterization of some dependent claims as a matter of design choice. Dependent Claims 30-36 include further limitations that are not disclosed, taught, or suggested by *Thaweethai*.

For at least these reasons, dependent Claims 30-36 are patentable over *Thaweethai*. Accordingly, Applicant respectfully requests reconsideration and the allowance of Claims 30-36.

Claim Rejections—35 U.S.C. § 103(a)

Dependent Claims 2, 11, 20, and 29. The Examiner rejected Claims 2, 11, 20, and 29 under 35 U.S.C. § 103(a) as being unpatentable over *Thaweethai* in view of U.S. Patent 5,828,583 issued to Bush et al. ("*Bush*").

Dependent Claims 2, 11, 20, and 29, which depend respectively from independent Claims 1, 10, 19, and 28, are patentable because, at a minimum, they include the limitations of their respective base Claims 1, 10, 19, and 28.

In addition, neither *Thaweethai* nor *Bush* discloses, teaches, or suggests (1) a "monitoring module operable to monitor the selected modem's performance and to modify the performance attribute for the selected modem according to the modem's performance," as recited in Claims 1 and 20; or (2) "monitoring the selected modem's performance" and "modifying the performance attribute for the selected modem according to the modem's performance," as recited in Claims 11 and 29. Given the context of Applicant's claimed inventions, Applicant respectfully disagrees with the Examiner's statement that "[u]pdating performance attributes of an apparatus being monitored is well known in the art." Furthermore, the system described in *Bush* is different from the claimed inventions. *Bush* teaches updating a performance attribute of a disk drive as opposed to a modem. In addition, *Bush* uses the performance attribute to predict device failure as opposed to using the performance attribute to select a device for use.

For at least these reasons, dependent Claims 2, 11, 20, and 29 are patentable over the proposed combination of *Thaweethai* and *Bush*. Accordingly, Applicant respectfully requests reconsideration and the allowance of Claims 2, 11, 20, and 29.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. In light of the Remarks set forth above, Applicant respectfully requests further examination and full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, Applicant invites the Examiner to contact the undersigned attorney at the Examiner's convenience at (214) 953-6791.

Although Applicant believes that no fees are due, Applicant authorizes the Commissioner to charge any fees or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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